without considering the service from other PBS stations. However, when taking into account service from other PBS stations, only 94 persons are predicted to lose PBS service, a number which the Petitioner asserts the Commission has found to be *de minimis.*

This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 23–14; RM–11943; DA 23–23, adopted January 10, 2023, and released January 11, 2023. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a Notice of Proposed Rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in section 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See sections 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622 in paragraph (j), amend the Table of TV Allotments under Virginia by revising the entry for Roanoke to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) *Table of TV Allotments.*

Community	Channel No.
* * * * *	
Virginia	
* * * * *	
Roanoke	*13, 27, 30, 34, 36
* * * * *	

[FR Doc. 2023–01002 Filed 1–19–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[GN Docket No. 22–69; FCC 22–98; FR ID 122588]

Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) seeks comment on potential rules to address digital discrimination of access to broadband internet access service. The document proposes to adopt a definition of ''digital discrimination of access'' as that term is used in section 60506 of the Infrastructure Investment and Jobs Act and seeks comment on further details of the definition, including its scope and the appropriate legal standard. The document proposes to revise the Commission's informal consumer complaint process to accept complaints of digital discrimination of access, and it proposes to adopt model policies and best practices for states and localities combating digital discrimination. The document also seeks comment on other rules the Commission should adopt to facilitate equal access and combat digital discrimination, and the legal authority for adopted rules.

DATES: Comments are due on or before February 21, 2023, and reply comments are due on or before March 21, 2023.

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated in this document. Comments and reply comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998). Interested parties may file comments or reply comments, identified by GN Docket No. 22–69 and FCC 22–98 by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing ECFS: *https://www.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, 35 FCC Rcd 2788 (March 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

FOR FURTHER INFORMATION CONTACT: For further information, please contact either Aurélie Mathieu, Attorney Advisor, Competition Policy Division, Wireline Competition Bureau, at *Aurelie.Mathieu@fcc.gov* or at (202) 418–2194.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*) in GN Docket No. 22–69 and FCC 22–98, adopted on December 21, 2022, and released on December 22, 2022 The full

text of this document is available for public inspection at the following internet address: *https://www.fcc.gov/document/fcc-takes-next-steps-combat-digital-discrimination-0.* To request materials in accessible formats for people with disabilities (*e.g.* braille, large print, electronic files, audio format, etc.), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), or (202) 418–0432 (TTY).

Synopsis

I. Introduction

1. In this proposed rule we take the next step in our efforts to promote equal access to broadband for all people of the United States by seeking comment on potential rules to address digital discrimination of access to broadband internet access service. Equal access to high-quality, affordable broadband internet service is critical for everyone living in the Nation, as we increasingly rely on broadband for work and education, healthcare and entertainment, and to stay connected with friends and family. As the broadband networks we depend on have become the backbone to many aspects of civic and commercial life, everyone needs access to robust, high-speed internet.

2. In this proceeding, we seek to identify and address the harms experienced by historically excluded and marginalized communities; provide a grounding for meaningful policy reforms and systems improvements; and establish a framework for collaborative action to promote and facilitate digital opportunity for everyone. These goals follow express congressional direction in section 60506 of the Infrastructure Investment and Jobs Act (Infrastructure Act) to ''ensure that all people of the United States benefit from equal access to broadband,'' including by preventing and identifying steps to eliminate ''digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin.'' In March of this year, we launched a broad inquiry on how to construe the language in section 60506. In response, we received input from a broad array of stakeholders. We now seek further, focused comment on the statutory language and the proposals suggested in the record, as we create a framework for addressing digital discrimination.

II. Background

3. On November 15, 2021, President Biden signed the Infrastructure Act into law. Among other provisions regarding broadband infrastructure, section 60506 of that Act set forth various requirements for the prevention and elimination of digital discrimination. Defining ''equal access'' as ''the equal opportunity to subscribe to an offered service that provides comparable speeds, capacities, latency, and other quality of service metrics in a given area, for comparable terms and conditions,'' section 60506 requires the Commission to adopt rules not later than two years after enactment ''to facilitate equal access to broadband internet access service.'' (The Infrastructure Act defines ''broadband internet access service'' for section 60506 and the remainder of Title V as having ''the meaning given the term in section 8.1(b) of [the Commission's rules], or any successor regulation.'' In this proposed rule, we use the terms ''broadband'' and ''broadband internet access service'' interchangeably.) In satisfying that obligation, section 60506 requires us to consider ''the issues of technical and economic feasibility presented by that objective'' and directs our rules be aimed at ''(1) preventing digital discrimination of access based on income level, race, ethnicity, color, religion or national origin; and (2) identifying necessary steps for the Commission[] to take to eliminate discrimination described in paragraph (1).'' Section 60506 further directs the Commission to collaborate with the Attorney General to ensure that ''Federal policies promote equal access to robust broadband internet access service by prohibiting deployment discrimination''; to develop ''model policies and best practices that can be adopted by States and localities to ensure that broadband internet access service providers do not engage in digital discrimination''; and to revise our ''public complaint process to accept complaints from consumers or other members of the public that relate to digital discrimination.''

4. *Pre-Existing Commission Authority To Address Discrimination and Promote Access.* Section 60506 follows other authority granted to the Commission to address discrimination. Section 1 of the Communications Act of 1934, as amended (the Communications Act), codifies as one of the core purposes of the Commission ''to make available, so far as possible,'' a ''rapid, efficient, Nation-wide'' wire and radio communication service with adequate facilities ''to all of the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.'' The Communications Act also includes authority in section 202(a) to prohibit unjust or unreasonable discrimination by common carriers in charges, practices, classifications, or regulations in connection with like communications services. The Universal Service provisions of section 254 promote access to telecommunications and information services for ''[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas.'' Section 706 requires the Commission to conduct regular inquiries as to whether ''advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.'' As part of the Commission's authority to grant applications for licenses through a competitive bidding process, section 309(j) requires the Commission to design a bidding process that will, among other things, ''promot[e] economic opportunity and competition'' by ensuring licenses are disseminated ''among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.'' Under section 541, local franchise authorities are required to ''assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area.'' And to implement section 257, the Commission adopted a ban on discrimination ''on the basis of race, color, religion, national origin or sex,'' in broadcast transactions.

5. *Commission Efforts To Bridge the Digital Divide.* Our work to implement section 60506 complements and builds upon a robust history of Commission efforts to bridge the digital divide. The Commission has long used its Universal Service programs to promote access to telecommunications services and advanced information services at just and reasonable rates for all. These programs help deliver broadband services to low-income consumers and to unserved and underserved communities in rural and insular areas, and provide support in various ways: one offers low-income consumers discounts on voice service or broadband internet access service; others provide funding to eligible schools and libraries for affordable broadband services to help connect students and members of local communities or provide funding for health care providers to ensure that patients have access to broadband enabled healthcare services; and, because some areas may lack network infrastructure, one program offers subsidies to providers to build out and

deploy broadband networks. Since 2020, the Commission also has received congressional appropriations to establish the Emergency Broadband Benefit (EEB) Program and its successor, the Affordable Connectivity Program (ACP), which provides monthly discounts for broadband services and connected devices for qualifying households; and the Emergency Connectivity Fund (ECF) and COVID–19 Telehealth Programs, which have, respectively, provided funding to eligible schools and libraries for broadband services and connected devices for use by students, school staff, or library patrons and health care providers for telecommunications services, information services and connected devices. The Emergency Broadband Benefit and Affordable Connectivity Programs alone have helped provide affordable broadband to more than 15 million qualifying households.

6. We have also explored and taken action on issues that may uniquely impact broadband service in underserved communities. In March 2021, the Public Safety and Homeland Security Bureau refreshed the record in a proceeding regarding network resiliency during disasters, including in communities with vulnerable populations. In February of this year, we adopted rules addressing certain practices in apartments, public housing, office buildings, and other multi-tenant buildings that limit competition for broadband service in those buildings. And in March of this year, the FCC released its Strategic Plan which reflects goals to help bring affordable, reliable, high-speed broadband to 100 percent of the country and to gain a deeper understanding of how our rules, policies, and programs may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

7. *Communications Equity and Diversity Council.* On June 29, 2021, the Commission chartered the Communications Equity and Diversity Council (CEDC). (In chartering the CEDC, the Commission renewed the charter of the Advisory Committee on Diversity and Digital Empowerment under a new name.) The mission of the CEDC is to present recommendations to the Commission on ''advancing equity in the provision of and access to digital communication services and products for all people of the United States, without discrimination on the basis of race, color, religion, national origin, sex, or disability.'' The Commission has appointed distinguished leaders from community, industry and governmental organizations as members of the CEDC and its three working groups: the Digital Empowerment and Inclusion Working Group, tasked with ''making recommendations for addressing digital redlining and other barriers that impact equitable access to emerging technology in under-served and under-connected communities''; the Innovation and Access Working Group, tasked with ''recommending solutions to reduce entry barriers and encourage ownership and management of media, digital, communications services and next-generation technology properties, and start-ups to encourage viewpoint diversity by a broad range of voices''; and the Diversity and Equity Working Group, tasked with ''examining how the FCC can affirmatively advance equity, civil rights, racial justice, and equal opportunity in the telecommunications industry to address inequalities in workplace employment policies and programs.''

8. The CEDC and its working groups have taken significant steps toward executing their charges over the past 17 months. The CEDC has held five public meetings, including one on September 22, 2022, when the Innovation and Access Working Group hosted a Digital Skills Gap Symposium & Town Hall to examine the issues and challenges that states and localities face in addressing the need for greater digital skills training. And on November 7, 2022, the CEDC adopted a report titled ''Recommendations and Best Practices to Prevent Digital Discrimination and Promote Digital Equity,'' including a portion developed by the Digital Empowerment and Inclusion Working Group recommending both (1) model policies and best practices to prevent digital discrimination by broadband providers, and (2) best practices to advance digital equity for states and localities.

9. *Task Force to Prevent Digital Discrimination.* On February 8, 2022, Chairwoman Rosenworcel announced the formation of the cross-agency Task Force to Prevent Digital Discrimination. The Task Force is focused ''on creating rules and policies to combat digital discrimination and to promote equal access to broadband across the country, regardless of zip code, income level, ethnicity, race, religion, or national origin.'' Since its inception, the Task Force has facilitated coordination among the Bureaus and Offices regarding this proceeding, advised the Commission on matters regarding combating digital discrimination, and met with interested stakeholders. In November of this year, Task Force leadership held listening sessions with a broad array of advocates to hear diverse perspectives on this proceeding.

10. *Notice of Inquiry.* In March 2022, we released a *Notice of Inquiry* commencing this proceeding and seeking broad comment on the statutory language and rules we should adopt consistent with congressional direction. In response, we received substantial comment on these issues from a range of stakeholders representing interests from the civil rights community, state and local governments, and broadband service providers of various sizes, technologies, and business models. The record reflects diverse perspectives on the nature and causes of digital discrimination of access, how to construe section 60506 and the authority it offers us, and the steps we should take to fulfill the Infrastructure Act's direction.

III. Discussion

11. In light of this record, we now seek further, focused comment on the rules we should adopt to fulfill the congressional direction in section 60506 to facilitate equal access to broadband internet access service and prevent digital discrimination of access. We first propose and seek comment on possible definitions of ''digital discrimination of access'' as used in the Infrastructure Act. We next propose to revise our informal consumer complaint process to accept complaints of digital discrimination. We seek comment on the rule or rules we should adopt to prevent digital discrimination of access, as required by Congress. And we propose to adopt model policies and best practices for states and localities combating digital discrimination based on the CEDC recommendations. (For purposes of this proposed rule, the term ''localities'' includes Tribal governments.)

A. Defining ''Digital Discrimination of Access''

12. We propose to adopt a definition of ''digital discrimination of access'' that encompasses actions or omissions by a provider that differentially impact consumers' access to broadband internet access service, and where the actions or omissions are not justified on grounds of technical and/or economic infeasibility. We seek comment on whether this definitional approach should depend on whether, and for what reason(s), the provider intended to discriminate on the basis of a protected characteristic. We therefore propose to define ''digital discrimination of access,'' for purposes of this proceeding, as one or a combination of the following: (1) ''policies or practices, not

justified by genuine issues of technical or economic feasibility, that differentially impact consumers' access to broadband internet access service based on their income level, race, ethnicity, color, religion, or national origin''; and/or (2) ''policies or practices, not justified by genuine issues of technical or economic feasibility, that are intended to differentially impact consumers' access to broadband internet access service based on their income level, race, ethnicity, color, religion, or national origin.'' (We further explore the nuances and possible meaning of the components our proposed definitions in Part III.A.2 of this proposed rule.) We believe that this approach represents a plausible interpretation of ''digital discrimination of access'' as the term is used in the Infrastructure Act. We seek comment on this proposal, and we seek further comment on the details of this definition.

13. We seek comment on whether this definitional approach represents the best way to interpret digital discrimination of access under the statute. Should the definition focus on the provider's actions or omissions as represented by its policies and practices, or should we adopt another approach? Should the definition exclude those actions or omissions that are justified by issues of technical and economic feasibility? Is there another definitional approach that would be more practical or implementable? Does our proposed approach align with the concept of digital discrimination in section 60506 and allow us to fulfill the goals of that section? Would a different definition for ''digital discrimination of access,'' including suggestions in the record, better interpret digital discrimination under the statute? Does the statutory use of the statutorily-defined term ''equal access'' separate from the statutorily-undefined term ''digital discrimination of access'' counsel any particular approach? We propose to define the term ''digital discrimination of access'' to give meaning to the full term used in subsection 60506(b)(1), and we seek comment on this proposal. Is that the appropriate term in section 60506 to define, or should we instead define a different term, such as ''digital discrimination''? What significance, if any, do the words ''of access'' hold? Should we draw on Commission precedent to give meaning to the full term ''digital discrimination of access'' or its components, such as the use of ''discrimination'' in section 202(a) of the Communications Act? If so, how should we do so? Rather than incorporate technical and economic feasibility into our definition in the manner we have proposed, should we instead understand section 60506 to require providers to ''take whatever affirmative steps [are] necessary to make equal access economically and technologically feasible?'' Should we consider any of the definitions of ''digital discrimination'' that the CEDC's Digital Empowerment and Inclusion Working Group compiled in its report on model policies and best practices for states and localities from interviews they conducted? If so, how should we include that content in the definition?

1. Disparate Impact and Disparate Treatment

14. We seek comment on whether to adopt the definition of digital discrimination based on disparate impact (*i.e.,* discriminatory effect), disparate treatment (*i.e.,* discriminatory intent), or both. In response to the *Notice of Inquiry,* we received comments in support of each approach, including arguments that the language of section 60506 encourages or requires us to adopt one approach or the other. We now seek further comment on which approach (or combination of approaches) we should take and the legal support for each approach. Commenters in support of a disparate impact standard put forth a number of arguments to explain their view. For example, some commenters including the American Foundation for the Blind, Black Women's Roundtable, the Multicultural Media, Telecom and Internet Council, and Public Knowledge, urge the Commission to define digital discrimination as being based on disparate impact and argue that this is the only way to create an effective prohibition that captures discrimination as it happens in the real world. In addition, commenters such as the National Digital Inclusion Alliance, the National Urban League, and representatives of several cities and counties across the country emphasize that facially neutral or even unintentional practices could still produce discriminatory effects and ''the devastating consequences are much the same'' as intentional discrimination. Several commenters further argue that the language of section 60506 supports a disparate impact approach.

15. Commenters favoring a definition requiring disparate treatment also offer a variety of arguments to support their view. Some commenters, such as ACA Connects, International Center for Law & Economics, AT&T, and the Wireless Internet Service Providers Association (WISPA), argue that even broadband deployment driven by legitimate business reasons might lead to uneven deployment, and that digital discrimination of access should not be understood to include such conduct. AT&T and the U.S. Chamber of Commerce further assert that a rule defining digital discrimination based on disparate impact alone would chill broadband investment and harm competition. CTIA-The Wireless Association (CTIA) maintains that an intent standard is most consistent with Congress's and the Commission's overall efforts to improve broadband access and affordability and the many challenges involved in broadband deployment. Some commenters also argue that the language of section 60506 does not support a definition of digital discrimination that includes disparate impact.

16. We seek further comment on this record and whether and how to incorporate disparate impact or disparate treatment in our definition, either independently or in some combined formulation, to best achieve the goal established by Congress in section 60506 to ''facilitate equal access.'' Are some commenters' assertions correct that the problem of digital discrimination is primarily one of disparate impact such that our efforts to ''facilitate equal access'' would fall far short if we focus solely on disparate treatment? Alternatively, would a definition centered on disparate impact chill investment and deployment? If so, why, and what is the likely scope of any disinvestment effect that considering disparate impact might cause, and would the harms of disinvestment (if any) outweigh the benefits of adopting such an approach, including but not limited to potentially greater access to broadband services? Would our consideration of disparate impact present practical challenges for entities subject to any rules we adopt or to victims of digital discrimination? Additionally, would considering disparate impact present practical administrative challenges for the Commission, or would it be simpler to administer because the Commission would only need to analyze the effect of the particular action and its business justification, rather than trying to discern intent? If there are administrative or compliance burdens associated with a disparate impact approach, how might the Commission minimize those burdens to best achieve the statutory goal of facilitating equal access? Under a disparate treatment approach, by contrast, how difficult would it be to discern a broadband

provider's intent for particular service and deployment decisions? Are there circumstances in which an intentionally discriminatory policy or practice does not produce discriminatory effects? Should the Commission address such a practice in order to satisfy its mandate to ''prevent[ ]'' digital discrimination, regardless of its effects?

17. Certain commenters also offer arguments in favor of each approach based on the statutory text of section 60506 and U.S. Supreme Court precedent. Some commenters argue that Supreme Court precedent in the *Inclusive Communities* decision, which concluded that the Fair Housing Act encompasses claims based on disparate impact, requires us to adopt a disparate treatment approach to implement section 60506, while others argue that the same precedent requires us to adopt a disparate impact approach. Some commenters further point to statutory language and context, separate from this precedent, as reasons for us to adopt each approach.

18. We first seek comment on whether the *Inclusive Communities* decision applies to our actions in this proceeding. As an initial matter, is this decision the controlling precedent under which we should consider this issue? Is there other judicial precedent we should consider, instead of or in addition to this decision, to guide our interpretation of section 60506? Are section 60506's design and operative language sufficiently similar to the Fair Housing Act and the other civil rights statutes discussed in *Inclusive Communities* to make the Supreme Court's textual analysis in that decision applicable to section 60506? Assuming that *Inclusive Communities* is binding or even helpful precedent for our task, we seek comment on the standard we should derive from the decision and apply to our analysis of section 60506. In the course of concluding that disparate impact claims are cognizable under the Fair Housing Act, the Supreme Court stated that antidiscrimination laws should be interpreted to encompass disparate impact claims when (1) the statutory text refers ''to the consequences of actions and not just to the mindset of actors,'' and (2) ''that interpretation is consistent with statutory purpose.'' Should we follow this two-pronged analysis? In its comments, Verizon frames its argument according to three ''textual through-lines'' it divines from the *Inclusive Communities* decision: (i) Congress's use of the language ''otherwise adversely affect'' or ''otherwise make unavailable''; (ii) the placement of these types of ''catchall phrases looking to consequences'' at the end of lengthy sentences that ''begin with prohibitions on disparate treatment''; and (iii) the placement of this language in the operative text of the statute. Should we understand this proposed framework to be a part of, or to supersede, the two-pronged test identified by the Supreme Court? Is the framing Verizon suggests unduly restrictive given the text of section 60506 and Congress's overarching goal of ensuring ubiquitous access to broadband services across the United States?

19. We also seek comment on the view shared by Lawyers' Committee for Civil Rights Under Law and the Multicultural Media, Telecom and internet Council that the *Inclusive Communities* standard encourages us to read section 60506 as primarily addressing disparate impacts. These commenters first argue that section 60506 is focused on the consequences of actions and not the mindset of actors. They identify subsection 60506(a)—which states that it is the policy of the United States to ensure that all people ''benefit from equal access to broadband''—as operating to shift the statute's focus to the consequences of actions rather than the intent of actors in the same way that the Supreme Court interpreted the term ''otherwise'' in the context of the Fair Housing Act. Furthering this argument, the Multicultural Media, Telecom and internet Council asserts that the definition of ''equal access'' in subsection 60506(a)(2) is focused on the impact of provider practices on a subscriber's ''equal opportunity to subscribe,'' not on provider intent. The Lawyers' Committee for Civil Rights Under Law argues that subsection 60506(b)(2)—which directs the Commission to identify necessary steps to ''eliminate discrimination'' based on the statute's listed categories —similarly refers to consequences, and that subsection 60506(c)(3), in allowing the Commission to prohibit discrimination based on ''other factors [it] determines to be relevant'' contains the kind of ''consequence-oriented catchall[ ]'' that the Supreme Court has found instructive in determining the appropriateness of a disparate impact approach. In this regard, it also argues that interpreting section 60506 to encompass disparate impact claims is consistent with the statutory purpose, satisfying the second prong of the *Inclusive Communities* inquiry, because the language of subsection 60506(a) evinces Congress's ''clear intent to create a world where all Americans can maintain equal access to broadband.'' We seek comment on these arguments and whether they should persuade us to adopt a definition of digital discrimination based on (or including) disparate impact.

20. We next seek comment on the view of Verizon, AT&T, and USTelecom, which all argue that *Inclusive Communities* should limit our definition of digital discrimination to include only intentionally discriminatory acts. Verizon argues that section 60506 lacks the key word ''otherwise,'' which the Supreme Court has noted signals a shift in the statutory language away from an actor's intent to the consequences of the actor's actions. Verizon, contrary to the Lawyers' Committee for Civil Rights Under Law's argument, contends that the statute lacks the sort of ''catchall'' phrase the Court has previously used to identify statutes that allow for disparate impact claims or any ''effects-based language.'' Instead, Verizon interprets Congress's direction in subsection 60506(b)(1) as focused on the ''motive'' of the acting entity, not on whether the action results in disparate impact. AT&T and USTelecom similarly argue that section 60506 lacks the phrases that the Court has previously found to support claims under a disparate impact analysis, and also assert that section 60506's use of the phrase ''based on'' when formulating the prohibition ''requires a showing of purposeful discrimination rather than incidental effects.'' And as a structural matter, AT&T asserts that subsection 60506(a) is only aspirational and the fact that subsections 60506(b) and (c) do not specifically refer to equal access ''within any given provider's service area,'' implies that Congress did not intend to apply a disparate impact standard. We seek comment on these arguments and whether they should persuade us to adopt a definition of digital discrimination based solely on disparate treatment.

21. We seek comment on various additional interpretative questions. Under Supreme Court precedent, a ''business necessity'' generally constitutes a defense to a discrimination claim that is based solely on disparate impact. In directing the Commission to take into account ''issues of technical and economic feasibility'' when adopting our rules, did Congress effectively build a business justification defense into section 60506? If so, would this indicate that Congress intended for section 60506 to encompass claims of digital discrimination based on disparate impact? For commenters arguing that the statute only permits liability for intentional digital

discrimination, how would the Commission account for technical and economic feasibility in that circumstance? Should we understand Congress to have intended to allow providers to justify intentional discrimination on the basis of technical and economic feasibility? Are there other examples commenters can provide of a statute only providing a business justification defense to a claim of intentional discrimination?

22. Some commenters argue that the Commission should adopt rules that encompass disparate impact claims because the statute does not specify that intent is a required element of digital discrimination, and Congress has included such language in recent telecommunications related consumer protection laws, thus indicating that Congress intended to not require discriminatory intent. We seek comment on these views. We also seek comment on whether broadband providers are already subject to laws and regulations prohibiting intentional discrimination. And if so, do such laws extend to the full scope of digital discrimination contemplated by section 60506? For example, do they apply only to cable franchises, and only to discrimination based on income? Do they apply only to common carriers with respect to common carrier services? Are there state or local laws that address digital discrimination that we should note? If broadband providers are already subject to laws of general applicability preventing intentional discrimination, does that suggest section 60506 includes instances of disparate impact? Or are there intentionally discriminatory practices our rules could capture that are not already prohibited by other laws and regulations? We seek comment on these differing perspectives.

23. We also seek comment on AT&T's structural argument that under a disparate impact approach, section 60506 would be on a ''collision course'' with the other broadband provisions of the Infrastructure Act. AT&T warns that broadband deployment efforts funded through other provisions in the Infrastructure Act ''might skew [a provider's] deployment ratios for households inside and outside of protected classes,'' and thus increase that provider's risk of liability under a rule that includes a disparate impact standard. Do others agree with this assertion that there is a tension between a disparate impact approach and the Infrastructure Act's deployment objectives? If so, how could we structure our rules to mitigate these concerns? Would a prohibition focused solely on discriminatory intent fit within the Infrastructure Act's other broadband-related provisions better than a rule that includes disparate impact liability? ACA Connects argues that, in contrast to statutes like the Civil Rights Act of 1964, the Fair Housing Act, and the Equal Credit Act, there is no record of a history of discriminatory conduct in the telecommunications industry that could justify adoption of a disparate impact rule. We seek comment on this reasoning. Is it accurate that those entities currently providing broadband services (or their predecessors) have no record of a history of discriminatory action? Would such a record be necessary to adopt rules to prohibit digital discrimination based on disparate impact liability?

24. We seek comment on whether the inclusion of income level as a listed characteristic should guide our understanding of whether the statute applies to claims of discrimination based on disparate impact or disparate treatment. CTIA contends that the inclusion of income level as a listed characteristic is unique compared to Federal civil rights statutes and its ''novelty'' supports a rule based solely on discriminatory intent. According to CTIA, an approach to antidiscrimination laws and claims of discrimination based on income level under a disparate impact analysis would conflict with subsection 60506(b)'s direction that our rules account for economic feasibility. In contrast, Public Knowledge rejects the characterization that prohibiting discrimination based on income level is novel, and Communications Workers of America, Common Cause et al., and the Leadership Conference on Civil and Human Rights all point to the inclusion of income level as an indication that Congress intended section 60506 to cover a wide range of practices, including those giving rise to disparate impact claims. We seek further comment on this divided record. Is the inclusion of income level as a listed characteristic in an antidiscrimination statute novel on a Federal and state level? If so, does that counsel in favor of adopting a definition based solely on disparate treatment, one based solely on disparate impact, or one based on some combination of the two? Furthermore, how does a consumer's income level, or the average income level of a geographical area, relate to economic feasibility in the deployment and provision of broadband internet access services?

2. Other Components of the Definition

25. We next seek comment on other components of our proposed definitions. We seek comment to drive our understanding of what services, entities, and practices should be within the scope of our definition; how and on what bases we should understand policies and practices to be justified by technical and economic considerations; who can be subject to digital discrimination; and how we should determine when digital discrimination has occurred. We seek comment on each issue in turn.

26. *Covered Services.* We first seek comment on the scope of services that individuals use when they experience digital discrimination of access. We seek to answer the following question: what services are consumers using if and when they encounter ''policies or practices . . . that differentially impact [their] access to broadband internet access service''? Commenters to the *Notice of Inquiry* differ on whether we should extend our definition of ''digital discrimination of access'' to broadband internet service provided over a variety of technologies, both fixed and mobile, other communications services, and services delivered over broadband. These commenters argue that consumers should not be excluded from enjoying certain civil rights protections by virtue of the service they are using, and that some consumers and communities cannot enjoy the benefits broadband has to offer without having non-discriminatory access to services accessed over broadband. By contrast, other commenters argue that services other than broadband are outside the scope of section 60506 and this proceeding. In the proposed definitions of ''digital discrimination of access,'' we propose to limit our focus to broadband internet access service. We seek comment on what technologies our definition should include.

27. We seek comment on the types of technologies over which broadband internet access service is provided and to which our rules should apply. The record reflects that providers can use various forms of technologies to provision broadband to consumers, including digital subscriber line (DSL), cable modem, fiber, fixed and mobile wireless, and satellite. Are these types of technologies correctly understood as the technologies over which broadband internet access service is provided, and are there any other types of technologies we should consider? Does the definition of ''broadband internet access service'' that is provided in § 8.1(b) of the Commission's rules capture the appropriate scope of technologies such that we should follow the approach taken in that rule? Should we consider the upload and download speeds of the types of technologies that providers use

to provision broadband service and, if so, how? Are there any unique considerations associated with different technologies we should take into account and, if so, how should we address them? Does the language of section 60506 in any way require us to include or exclude broadband provided over certain types of technologies?

28. We seek comment on including other services, such as other communications services and services delivered over broadband, into our definition. In order to achieve the policy that ''subscribers should benefit from equal access to broadband internet access service,'' and fulfill our direction to ''facilitate equal access to broadband internet access service,'' is it necessary that we include other services in our definition? How do other services relate to that goal? Or do commenters believe that section 60506's focus on broadband internet access service reflects congressional intent that other services not be included in our definition? Are other services distinct from broadband internet access service in ways that would complicate analysis of the problem of digital discrimination if we include them? And would their inclusion complicate administration of and compliance with any rules we adopt under this definition? If we did include other communications services or services offered over broadband, what specific services should we include? Does section 60506 give us authority to include these types of services in our definition? If not, can we rely on other sources of authority to do so? If we were to address discrimination issues regarding other services under other authority, would it be better to develop dedicated rules for those services? Should we, at minimum, include services we find to provide the functional equivalent of broadband internet access service?

29. *Covered Entities.* We next seek comment on what types of entities should be covered by our definition of digital discrimination of access. We seek to answer the following question: *whose* ''policies or practices . . . that differentially impact consumers' access to broadband internet access service'' should be covered by our definition? In the record developed in response to the *Notice of Inquiry,* some commenters argue that we should extend our definition broadly beyond broadband providers to include entities working on a provider's behalf; those involved in any of the logistical steps to provide broadband, such as local and state governments and those who maintain network infrastructure; and generally to ''any entity that can affect'' an individual's ability to access or afford broadband, such as a business owner or landlord. These commenters note that actions by a variety of entities can differentially impact consumers' access to broadband and thus, to address digital discrimination as directed by Congress, we should include these types of entities within the scope of the rules we adopt. By contrast, the National Multifamily Housing Council and the National Apartment Association assert that the statutory language limits our focus to broadband providers.

30. We seek comment on whether we should understand ''digital discrimination of access'' to include policies or practices by a broader range of entities than broadband providers. Can entities other than broadband providers engage in or contribute to digital discrimination of access? If so, what are those entities and can they all be covered by the rules we ultimately adopt in this proceeding? Are these types of entities different from broadband providers in ways that would complicate analysis of the problem of digital discrimination if we defined it to include them? And would their inclusion complicate administration of and compliance with any rules we adopt? Would covering a broader range of entities allow any rules we adopt to better adapt to changes in the provision of broadband or how digital discrimination occurs? Should we instead understand our definition to include only broadband providers and those working on their behalf? How would we understand when an entity is working on behalf of a broadband provider? To the extent we include agents of broadband providers in our definition, what expectations and obligations should we place on agents who are simply executing at their principal's direction? If we limit our definition to include only broadband providers, would such an approach leave a loophole or be too narrow to allow us to fulfill our direction to ''facilitate equal access to broadband internet access service''? Do we have authority to extend our rules to entities other than broadband providers? Should the analysis of what constitutes digital discrimination of access differ as applied to broadband providers and their related entities on the one hand, and entities unrelated to broadband providers on the other? If we understood covered services to extend beyond broadband service, are there other considerations we should take into account regarding covered entities?

31. *Prohibited Practices and Policies.* We seek comment on how the Commission should understand the policies or practices that can lead to digital discrimination. We seek to answer the following question: *what* ''policies or practices . . . differentially impact consumers' access to broadband internet access service''? In the record developed in response to the *Notice of Inquiry,* some commenters suggest we consider policies and practices related to broadband infrastructure deployment, network upgrades, marketing or advertising, service provision, network maintenance, and customer service; service provider use of algorithms to make decisions about deployment and other aspects of providing internet service; and privacy and security practices. These commenters argue that prohibiting discriminatory practices in these areas is necessary because they can lead to inequitable outcomes for consumers or exacerbate existing biases.

32. We seek comment on what policies and practices should be covered by our definition. Do commenters agree that the practices and policies suggested in response to the *Notice of Inquiry* can differentially impact consumers' access to broadband? What specific practices and policies related to broadband infrastructure deployment, network upgrades, marketing or advertising, service provision, network maintenance, customer service, sales, and ongoing technical support can do so? For example, can practices and policies related to certain terms and conditions of service, such as those concerning speeds, data caps, throttling, late fees, equipment rentals and installation, contract renewal or termination, customer credit or account history, promotional rates, or price, constitute or lead to digital discrimination? Are there practices and policies related to how broadband internet access service is sold or how technical support is provided that can lead to digital discrimination? How can we account for the idea that policies and practices can cause or contribute to digital discrimination in combination, if not individually? Can bias in algorithms lead to digital discrimination? And, what specific device and consumer data protection measures, and privacy and security practices, can differentially impact consumers' access to broadband? Are there other policies and practices that we should specifically consider in the context of understanding how to define digital discrimination of access to best meet our direction to ''facilitate equal access to broadband''?

33. We seek comment on how the language of section 60506 should influence the policies and practices we consider part of digital discrimination. Section 60506 also defines ''equal

access'' with reference to ''comparable speeds, capacities, latency, and other quality of service metrics'' and ''comparable terms and conditions.'' Does this language give us discretion to include any practices that relate to quality of service, including non-technical aspects of service, such as customer service, marketing or advertising, or terms and conditions related to contract renewal, account history, or price? Or, does the preceding reference to ''speeds, capacities[, and] latency'' reflect Congress's intent for the Commission to consider only policies and practices related to technical aspects of quality of service? What types of policies and practices should fall within the statutory phrase ''terms and conditions''? Does that phrase include pricing? What are the limitations, if any, on our ability to include policies and practices that impact technical aspects of existing service, and the decision to deploy service in the first instance?

34. *Technical and Economic Feasibility.* We seek comment on how our definition should ''tak[e] into account'' justifications on the basis of technical and economic feasibility. In the language of our proposed definitions: *in what circumstances* is a differential impact to consumers' access to broadband ''justified by genuine issues of technical or economic feasibility''? In the record developed in response to the *Notice of Inquiry,* some commenters argue that providers should have a safe harbor and presumption of nondiscrimination when certain conditions are met or certain circumstances are present. These commenters explain that in these situations a lack of deployment is most likely due to economic or technical factors that make deploying broadband impractical, and that providing a safe harbor in these instances will allow us to more thoroughly investigate more probable instances of digital discrimination. Other commenters argue that we should instead analyze claims of infeasibility on a case-by-case basis. Some of these commenters argue that individualized scrutiny and strict standards are necessary to fulfill Congress's intent as set forth in section 60506, to ensure that meritless assertions of infeasibility do not impede legitimate complaints alleging digital discrimination of access.

35. We seek comment on whether to adopt safe harbors, establish a case-by-case standard for infeasibility, or both. As an initial matter, we seek comment on what the legal significance of any such safe harbor should be, in terms of shifting the burden of proof or otherwise. What would be the practical implications of adopting safe harbors generally or a case-by-case standard? Would a bright line safe harbor approach be more likely to excuse conduct that, on an individualized review, may not be justified? Are there ways we could design the safe harbor or safe harbors to increase the odds that we successfully identify cases of digital discrimination while excluding only non-meritorious claims or charges? Would a case-by-case standard be more effective at identifying justified, and unjustified, conduct? If so, does that increased effectiveness outweigh any administrative and compliance burdens that may accompany an individualized approach? How can we minimize any identified burdens? Would requiring an individualized analysis for each case of alleged infeasibility place an unreasonable burden on providers or create uncertainty that could chill network investment? Would a combination of each approach, setting an individualized analysis accompanied by certain safe harbors, alleviate any identified concerns with each approach individually? Does the language of section 60506 require us to take one approach or the other? Would an individualized approach create uncertainty and potentially chill investment? Or, would a safe harbor approach effectively immunize problematic behavior so as to undermine our ability to facilitate equal access to broadband?

36. We seek comment on the substantive standard we should require under either approach, to best balance congressional direction to ''facilitate equal access'' while ''taking into account the issues of technical and economic feasibility presented by that objective.'' If we were to provide a safe harbor, which circumstances would be appropriate for a safe harbor? Should we provide a safe harbor under limited circumstances, encompassing a limited set of business necessity exemptions? Should we provide a safe harbor under a wider variety of circumstances and, if so, what should those circumstances be? Would a safe harbor be appropriate when a provider acted in reliance on Commission requirements or funding commitments, such as merger conditions, those associated with universal service funding, or build-out? Or would a safe harbor be appropriate when conduct occurs that is outside of a provider's control, such as third-party conduct? If we adopted an individualized analysis instead or in addition, what should be the standard for technical and economic infeasibility? How should we determine that an issue of feasibility is ''genuine,'' and are there standards or concepts in other contexts we should consider to do so? For example, should we look to the summary judgment standard in Federal court, which requires the party requesting relief to ''show[ ] that there is no genuine dispute as to any material fact,'' or the final step of the *McDonnell Douglas* burden-shifting analysis where a complainant can show that a proffered justification for allegedly discriminatory conduct is mere pretext? Should technical infeasibility require a showing that providing service was technically impossible, or some lower bar? Should economic infeasibility require a showing that providing service was unprofitable based on marginal cost, average cost, or some other basis? On what time horizon should we consider profitability or analyze claims of technical or economic infeasibility? Should we establish a bright line ''standard where a profit margin reduction between neighboring areas . . . does not constitute [economic] infeasibility''? Should we adopt different safe harbors, or a different individualized analysis, for different types of providers, or differently-situated providers? Does the language of section 60506 require us to include any particular safe harbors or factors in a standard for individualized analysis, beyond accounting for ''technical and economic feasibility''? What specifically does it require us to include? More generally, how should we construe ''feasibility'' within the meaning of section 60506? Should we understand it to refer to capability, convenience or reasonableness? What would be the practical impact of each such interpretation? Should we draw on prior instances of the Commission interpreting and using language similar to the phrase ''technical and economic feasibility'', and how specifically would we apply those instances in the context of section 60506?

37. *Consumers.* We seek comment on how we should identify those who might experience digital discrimination of access. We seek to answer the following question: *whose* experience of a ''differential[ ] impact [on] . . . access to broadband internet access service,'' whether intended or not, is the focus of Section 60506? In the record developed in response to the *Notice of Inquiry,* one commenter argues that we should consider claims by individuals and communities that meet one of the listed characteristics, because entire communities may experience digital discrimination. Another argues that we

should not include non-subscribers or ''consumers generally.''

38. We seek comment on what consumers should be covered by our definition of digital discrimination of access. Should we understand digital discrimination of access to be a problem experienced by individuals or communities, or both? Is digital discrimination experienced differently at the individual and community levels such that our definition would need to account for that difference? What are the practical or administrative costs and benefits to the Commission, providers, and those who might suffer digital discrimination if both communities and individuals are covered by our definition? Does section 60506 *require* us to include or exclude communities from coverage?

39. Do commenters agree with ACA Connects that we should limit our concept of ''subscribers'' to only current subscribers, and not include non-subscribers or consumers generally? Would excluding non-subscribers imply that those who do not currently subscribe to broadband cannot experience digital discrimination of access? Is such an approach reasonable, or does it exclude those who might experience digital discrimination most acutely? If we adopt such a definition, how would we account for consumers who don't subscribe to broadband because the service is not available in their community, possibly because of digital discrimination? Does the use of the word ''subscribers'' in subsection 60506(a) require that the scope of our digital discrimination rules be tied to subscription status, or does the lack of reference to subscribers and general direction to ''facilitate equal access'' in subsection 60506(b) counsel in favor of covering non-subscribers? What would be the practical impact of limiting coverage to subscribers on the one hand, or extending it to non-subscribers on the other? If we include non-subscribers, are there distinctions between types of non-subscribers that we should consider, such as those who are and are not actively seeking broadband service? What distinctions or subcategories of non-subscribers should we consider and why?

40. *Listed Characteristics.* In our proposed definition, we propose to include the same characteristics as bases for discrimination as those identified in section 60506. We seek comment on how to give meaning to these characteristics and whether we should include any additional characteristics in the rules we ultimately adopt. In response to the *Notice of Inquiry,* commenters suggest interpreting the listed characteristics in accordance with existing ''legislation, regulations, and precedent,'' such as the Civil Rights Act of 1964 and/or the New York City Human Rights Law, because using existing understandings reduces uncertainty. Other commenters argue that the Commission should include additional characteristics such as disability status, age, sex, sexual orientation, gender identity and expression, familial status, domestic violence survivor status, homelessness, and English language proficiency. These commenters argue that the Commission should recognize characteristics of communities that are historically marginalized or underserved because doing so is consistent with Congress's intent in section 60506. By contrast, other commenters assert that the listed characteristics are exclusive, arguing that Congress was deliberate in its choice to specify the listed characteristics.

41. We seek comment on whether we should give further meaning to the characteristics listed in the statute and included in our proposed definition: income level, race, ethnicity, color, religion, and national origin. Is the meaning of some or all of these terms sufficiently established such that we do not need to give them further meaning? Even if their meaning is established, would it promote certainty to adopt further definitions or explanations consistent with other laws or precedent? Or would adopting definitions unnecessarily decide issues we could resolve on a case-by-case basis? If we did adopt further definitions based on existing law or precedent, what resources should we use to give meaning to the listed characteristics? Would the Civil Rights Act of 1964 or the New York City Human Rights Law most effectively define some or all of the listed characteristics? What other legislation, regulations, or precedent should we consider to give meaning to the listed characteristics?

42. We seek comment on whether we should expand our definition to include characteristics beyond those listed in section 60506. (We note that section 60506 directs the Commission to adopt rules to facilitate equal access to broadband internet access service, ''including''—but not limited to—addressing discrimination based on the listed characteristics.) If we did, what additional characteristics would we include? Should we include some or all of disability status, age, sex, sexual orientation, gender identity and expression, familial status, domestic violence survivor status, homelessness, and English language proficiency, as suggested in the record? Should we include those residing in certain geographic areas, such as urban or rural areas, or areas that have experienced historic redlining? If we adopted some additional characteristics, but not all, on what basis should we decide which to include and which to exclude? Are these characteristics distinct from those listed in section 60506, or from one another, in ways that would complicate analysis of the problem of digital discrimination if we defined it to include them? And would their inclusion complicate administration of and compliance with any rules we adopt under this definition? Are the meanings of these various characteristics clear, or would we need to further define them? How would we do so? Might we adopt the meanings used by other Federal agencies such as the Equal Employment Opportunity Commission? If we decline to include additional characteristics, are there nonetheless circumstances in which we could consider the impact based on an unlisted characteristic when analyzing claims of digital discrimination based on a listed characteristic?

43. What would be the statutory basis for including additional characteristics in our definition? The term we propose defining, ''digital discrimination of access,'' in subsection 60506(b)(1) must be ''based on income level, race, ethnicity, color, religion, or national origin.'' Does the Commission have discretion to include additional characteristics for purposes of implementing section 60506, or does the presence of specific listed factors in subsection 60506(b)(1) demonstrate congressional intent to limit our focus to those factors? Could we take action to address inequities faced by those with unlisted characteristics under a different provision of section 60506: the policy statement in subsection 60506(a)(3) that we should ensure ''all people of the United States'' benefit from equal access; the broader direction in subsection 60506(b) to ''facilitate equal access''; or the separate direction in subsection 60506(c) to collaborate with the Attorney General to prohibit deployment discrimination based on ''other factors the Commission determines to be relevant''? Would any such action need to be distinct from action related to this definition of ''digital discrimination of access''? Or should we read these other provisions to reflect Congress's intent for the listed characteristics to evolve as communities or individuals demonstrate they face digital discrimination? Are there other sections of the Communications Act, or

other Federal legislation, that would give us authority to include certain characteristics in our rules preventing digital discrimination of access?

44. *Differential Impact.* We seek comment on the standard or standards we should use to determine when consumers face digital discrimination, relevant comparators, and data we should consider. We seek to answer the following question: *when* is consumers' access to broadband internet access service ''differentially impact[ed]'' by policies or practices, whether intentionally or not? We seek comment on how the Commission should compare services, terms, and conditions to make this determination; the geographic area we should compare across; and data sources we should look to in making this determination. Commenters in response to the *Notice of Inquiry* suggest comparing technical metrics such as speed, capacity, and network outages, as well as non-technical factors such as caliber of customer service. Commenters variously cite geographic boundaries such as municipal lines as well as a covered entity's service area as methods for defining a given area. Commenters also point to different ways that the Commission can use data in these efforts, such as by monitoring the status of fiber deployments in different communities and examining whether there exists a statistical correlation between the characteristics listed in section 60506 in a community and lower levels of access to broadband.

45. As an initial matter, we seek comment on the scope of our inquiry when identifying instances of differential impact. Should we understand ''equal access'' and ''discrimination of access'' to focus on availability of broadband, adoption of broadband, quality of broadband, or some combination of these factors? Are there other factors we should consider? The Electronic Frontier Foundation and other commenters observe that availability of broadband hinges on its deployment and highlights the lack of deployment in underserved areas despite the economic feasibility of doing so. The Multicultural Media, Telecom and internet Council argues that the statute should be viewed from the ''perspective of subscribers,'' which they assert means the Commission should also ''focus on issues related to broadband adoption, not just broadband availability.'' Other commenters agree that we should consider the barriers that affordability and a lack of digital literacy present to adoption of services, even where available. Conversely, the International Center for Law & Economics posits that matters of adoption and affordability have no basis in the statutory language, which it argues focuses only on physical availability. We seek comment on these arguments. When determining whether a consumer's access to broadband has been ''differentially impact[ed],'' should we look to availability of service or should we look to adoption, affordability, and quality of service where service is already available? What would be the practical impact of either interpretation, and would it be appropriate to consider both? Is there a statutory basis for including barriers to adoption in our definition? We also seek comment on how we should consider substitutability of service in determining whether a given area benefits from equal access. For example, does the availability of a comparable service where another service is unavailable mean that a consumer ''benefit[s] from equal access'' in a given area? Should the availability of one service utilizing a different technology, such as 5G wireless service versus traditional wireline service, impact the analysis where the other is otherwise incomparable or unavailable?

46. We seek comment on the standard and methods we should use to identify when a consumer's broadband internet access is differentially impacted with respect to the technical aspects of available service. Should we simply compare network performance metrics, and if so, at what threshold would we determine that performance was meaningfully better or worse for certain consumers? The National Digital Inclusion Alliance argues for establishing a prescriptive range for the quality-of-service metrics that would indicate that a service is ''comparable.'' If we establish prescriptive ranges of acceptable differences in service metrics, how do we ensure those ranges are not overly broad or narrow? Should we adopt different ranges depending on the service or geographic area? Is the number of relevant variables too large for this approach to be easily administered and complied with? How will any methods we adopt comparing technical quality of service need to change across services and technologies? What analytical approach should we take to account for the technical practicalities of provisioning broadband, such as when providers conduct network upgrades, network degradation occurs, or a provider experiences a network outage? Should we temporarily relax these standards when these circumstances occur? Some commenters argue that the Commission should require providers to undergo network performance testing similar to models that they assert have previously been effective. If we adopt periodic assessment requirements, how often would be practical to assess technical performance while accounting for changes that may occur over time, such as network upgrade cycles? How could we minimize the burden of this approach on providers? Should we assess comparability of service quality from the consumer's perspective and provide that service quality and terms and conditions are ''comparable'' if a consumer would not recognize differences in their broadband experience? Should we consider the unique needs of particular communities? What metrics and data sources can we employ in making these comparisons? Should we measure, for example, rates of service interruptions and cut-offs? Does section 60506 counsel that we take any particular approach when assessing comparability and determining whether there is a differential impact? For example, do the terms ''equal access'' or ''discrimination'' include any concept of scope or exclude any requirement of materiality for such differential impact? We also seek comment on whether and how broadband consumer labels might facilitate enforcement of any potential rules we adopt, either from the perspective of informing consumer complaints or Commission enforcement actions.

47. We seek comment on the standard and methods we should use to identify when a consumer's broadband access is differentially impacted with regard to non-technical aspects of available service. How can we determine when, for example, customer service, late fees, equipment rentals and installation policies, access to specific service plan offerings or speeds, contract renewal or termination policies, availability of customer credit or account history practices, and prices are meaningfully better or worse for certain consumers? Should we establish certain known thresholds to promote compliance and make it easier for consumers to know when they have experienced digital discrimination? Or is this inquiry better suited to a case-by-case determination? What standard would we use for any individualized analysis? To the extent we include price in our conception of digital discrimination, how should we consider plans that are identical along all features except for price? How should we consider the practice of price discrimination (*i.e.,* charging different

consumers different prices for the identical service)?

48. We seek comment on the relevant geographic comparators to use in identifying when a consumer's broadband access is differentially impacted. Commenters in response to the *Notice of Inquiry* suggest various methods for defining geographic areas for relevant comparators. The National Digital Inclusion Alliance, for example, proposes that the Commission use a provider's legally defined service area, such as its cable franchise area, within a given metropolitan or micropolitan statistical area. ACA Connects similarly contends that the relevant area should be defined as a provider's service area, and further argues that the Infrastructure Act does not provide us with authority to take a different approach. Conversely, Public Knowledge argues that our definition ''should be broad and flexible'' and that such an approach is consistent with the language of section 60506. Public Knowledge further argues that limiting our inquiry to a provider's service area would render the Commission incapable of addressing instances where services are not offered in the first instance as a result of discriminatory practices. Does the language of section 60506 counsel or require us to understand this geographic area in any particular way? The statement of policy in subsection 60506(a)(1) states ''the policy of the United States'' is that ''subscribers should benefit from equal access to broadband . . . within the service area of a provider of such service.'' Does this language reflect that our focus under section 60506 should be limited to a provider's existing service area? If so, how should a provider's existing service area be defined? Is it in all census blocks that the provider has a current subscriber? Or is it any area that the provider could deploy services to within a certain timeframe, and if so, what is the appropriate timeframe? Should we include areas in a certain proximity to a provider's current service area, and if so, what is the appropriate range? In subsection 60506(b), we are directed to adopt rules to ''facilitate equal access,'' and ''equal access'' is defined with reference to comparable service ''in a given area.'' Does the use of a different term in that definition reflect Congress's intent to understand geographic area differently, and if so, in what way?

49. We seek comment on these methods for understanding the geographic areas we should compare to determine if access to broadband internet has been differentially impacted. Should we compare only current subscribers to other consumers in a provider's service area? If so, are there instances where the Commission should expand or constrict the boundaries of such an area? What circumstances would necessitate or counsel doing so? Would an approach based on a provider's current service area prevent us from addressing instances when an individual or community completely lacks access to service from that provider? If we define the relevant area based on a provider's service area, should that understanding be cabined by the technology employed (such as wired versus wireless broadband) when a covered entity offers different kinds of services? Alternatively, should we adopt a broader understanding of the relevant area for comparison? Should we compare different providers within the same service area? Should we tie the relevant area to municipal boundaries, such as city, county, or state lines? Should we use concepts such as a metropolitan statistical area to capture similar areas that are not bound by municipal boundaries? Should we make comparisons between rural and urban areas, and if so how? Should we work with state, local, and Tribal governments to identify the appropriate comparison area? Should we use different concepts of geographic area in different contexts? Are there any unique considerations we should take into account when examining differential impact on the basis of income level?

50. We seek comment on data sources we can or should use to help us identify instances where consumers' access to broadband internet is differentially impacted. Commenters highlight various studies in responding to the *Notice of Inquiry,* and we seek comment on those cited. These include, among others, investigations into the correlation between median area income and broadband deployment; the sources and effects of digital redlining; availability of fiber and high-speed broadband in lower-income and marginalized communities; and broadband gaps in rural communities. AT&T, for example, cites a study that examines publicly available data from the Commission and the U.S. Census Bureau and asserts that non-white and lower income households are not systemically and disproportionately underserved. Are these assertions well grounded? Do commenters agree with this study's conclusions, and why or why not? Should the Commission utilize U.S. Census Bureau demographic data more generally in identifying instances of digital discrimination of access? Conversely, the Electronic Frontier Foundation and other commenters cite to a survey in California that examines racial and income disparities and the correlation between historical and digital redlining. Should the Commission consider survey data such as the study cited? Is the study offered by these commenters persuasive, and why or why not? Are there studies aside from those cited in the record that the Commission should examine, and why? For example, a study co-published by the Associated Press and The Markup examined services offered by major providers in various cities, where—despite being only blocks apart and being charged the same amount—one community, usually lower income and more racially diverse, received much slower internet service compared to another. We seek comment on the data presented and what accounts for the disparities identified.

51. We also seek comment on how we should leverage our own existing data and whether we should undertake new data collection efforts. What existing data sources could help us to identify when consumers' access to broadband internet has been differentially impacted? For example, should we look to the Broadband Data Collection, the Broadband Data Act mapping process, or other collections? How specifically should we use the data offered by these collections? Should these or other data sources be used individually or in combination with other sources, whether from the Commission or originating externally, and if so, how? How can we best leverage the data collected through our informal consumer complaint process? What steps can the Commission take, including making new data available, to enable individuals and communities to identify digital discrimination of access? Are there ways we can improve existing sources of data, including the Broadband Data Collection and National Broadband Map, so that they can be used in evaluating digital discrimination of access in the future? If we undertake new data collections, what data should we collect? Should we collect data on broadband adoption not captured by other collections; on marketing and advertising practices; on broadband usage and adoption; on technical and non-technical quality of service; pricing and service plan availability; or on other subjects? How should those data collections be designed to maximize their utility for the Commission's efforts to address digital discrimination of access, while minimizing the burden on entities who

must provide these data? If the Commission does collect new data, at what geographic level should this data be collected so that it can adequately address complaints of digital discrimination but not be too burdensome on providers? If the Commission collects new data through surveys, what kind of information should such surveys collect, and from whom? In conducting such surveys, are there other agencies, institutions, or organizations the Commission should consider partnering with?

B. Revising the Commission's Informal Consumer Complaint Process

52. We propose to revise our informal consumer complaint process to accept complaints of digital discrimination of access, as directed in section 60506. In the *Notice of Inquiry,* we explained that the Commission receives complaints through its Consumer Complaint Center and sought comment on how to modify our complaint processes to best execute this direction. In response, commenters suggest a variety of modifications to our consumer complaint process for purposes of accepting digital discrimination complaints. In light of this record, we propose to revise our consumer complaint process to (1) add a dedicated pathway for digital discrimination of access complaints; (2) collect voluntary demographic information from filers who submit digital discrimination of access complaints; and (3) establish a clear pathway for organizations to submit digital discrimination of access complaints. We further propose to make anonymized complaint data available to the public through the FCC's Consumer Complaint Data Center to inform third-party analyses. We seek comment on these proposals, and on any other revisions to our informal complaint rules and process that would be appropriate with respect to complaints regarding digital discrimination of access.

53. We seek comment on our proposal to add a dedicated pathway for digital discrimination of access complaints to our consumer complaint system. Commenters who propose this idea argue we should do so because it will help the Commission identify trends that warrant further action. Do others agree that adding a digital discrimination of access pathway would offer these benefits? Or are digital discrimination complaints better understood as a subset of ''internet'' complaints, for which there is already a category on our Consumer Complaint Center? If we did adopt this proposal—demographic information aside—should we create new or different fields for the digital discrimination of access complaint form from those offered for other types of complaints? If so, what specific changes should we make and what purpose would they serve?

54. We seek comment on our proposal to establish a pathway for organizations representing communities experiencing digital discrimination of access to submit digital discrimination complaints. We propose establishing a complaint pathway for state, local, Tribal, and community-based organizations, which would include separate processes for individual and organizational filers. Commenters who support this proposal argue that it will ensure that organizations can advocate on behalf of disenfranchised and marginalized individuals who are either unserved or underserved as a result of digital discrimination of access; and that it will enable the Commission better to identify and respond to substantive complaints and collaborate with state, local, and Tribal governments. What specific improvements can be made to the current informal consumer complaint process to make it more accessible for submission by organizations on behalf of groups of individuals? In what ways would a digital discrimination of access complaint from a community-based organization be different from an individual consumer's digital discrimination complaint, and how could we account for those differences in our consumer complaint system? Should organizational complainants be expected or required to share statistics and other information regarding the community in question and the services offered, or not offered, so that the Commission could more efficiently evaluate the bases of the complaint? What tools and resources should the Commission provide community-based organizations in order to submit digital discrimination of access complaints on behalf of the individuals they serve? Is the informal complaint process the appropriate entry point for organizational submissions? Would a dedicated collection portal help to differentiate consumer versus organizational submissions and better set clear expectations for the filer? Should we impose associational standing or other requirements on the filing of organizational complaints? If so, what such requirements would be appropriate?

55. We seek comment on our proposal to collect voluntary demographic information from filers who submit digital discrimination of access complaints. Commenters who support this idea argue that we should collect demographic information from individuals filing complaints because doing so will enable us to better identify underlying patterns of discrimination that complainants themselves may be unaware of, and thus increase the efficiency and utility of the informal complaint process. We seek comment on how we should collect demographic information from filers who submit digital discrimination of access complaints. What specific demographic information should we collect? Should we instead make the submission of demographic information mandatory for digital discrimination of access complaints? Would requiring demographic information discourage the filing of complaints, and if it would, would this potential loss of complaints be justified given the potential benefits of collecting this information? If the complaint process requests, but does not demand, demographic information, should complainants be advised that their information will not be readily useable for uncovering the presence of digital discrimination of access? Would doing so give complainants an incentive to provide demographic information? Are there specific privacy concerns we should account for when collecting this demographic information? How would we accommodate organizational complainants in any demographic information requirements we adopt? Given the temptation to make frivolous, malicious or prank complaints, and the ease of machine generation of such complaints, should complainants be required to provide enough information about themselves to enable the commission to verify the existence of the complainant? Does the collection of demographic information have an impact on a filer's willingness to complete the complaint form? If a complaint is misfiled through a different pathway, how should we collect demographic information from that filing?

56. We seek comment on any other changes we should make to our informal consumer complaint process to accept complaints of digital discrimination of access. Commenters variously propose that we make it easier to file a complaint for individuals who do not speak English; develop screening questions to guide consumers toward the appropriate category for their complaint; and improve our processes for submitting a complaint other than through our internet-based Consumer Complaint Center. We seek comment on whether to adopt these suggestions and, if we do, how to best implement them. We seek

comment on whether the Commission should engage in some form of complaint validation. Is it sufficient that providers who may be impacted by such complaints are able to review these complaints and respond?

57. *Making Complaint Data Available to the Public.* We seek comment on our proposal to make digital discrimination complaint data available to the public through the FCC's Consumer Complaint Data Center. The record in this proceeding reflects widespread support for ensuring that the data collected from digital discrimination of access complaints, including demographic information, are made publicly available for third-party review and analysis. Making these data available could promote transparency and empower third parties to identify trends in digital discrimination. We seek comment on how to best make these data publicly available and useful while protecting complainant privacy. Some of the data currently collected from consumer complaints are made publicly available on our website in the Consumer Complaint Data Center. Should we make the same data publicly available for digital discrimination of access complaints? To the extent we receive and make available demographic data unique to digital discrimination complaints, to protect the privacy of complainants, we propose taking steps to aggregate, anonymize, or otherwise de-identify those data. We seek comment on how best to do so while protecting complainant privacy. Would it be useful and effective to buffer, aggregate, or remove some information in the data to protect consumer privacy? Instead, are disaggregated data necessary to be useful? If so, how could we protect the privacy of complainants while still publishing disaggregated data? Should we make additional data available to parties that agree to certain terms regarding confidentiality and use of that data? What additional data would we make available, and on what terms?

C. Adoption of Rules

58. We seek comment on the rules we should adopt to fulfill the congressional direction to address digital discrimination of access. Section 60506 requires us to adopt rules to facilitate equal access to broadband, accounting for ''issues of technical and economic feasibility,'' that include ''preventing digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin,'' and ''identifying necessary steps for the Commission to take to eliminate [digital] discrimination.'' To execute this direction, we seek comment on whether we should adopt a broad prohibition of digital discrimination of access and if so, how to structure and enforce it; place affirmative obligations on broadband providers; and take action in other proceedings that bear on or relate to addressing digital discrimination. In addition, we seek comment on various other proposals received in response to our *Notice of Inquiry.*

1. Broad Prohibition on Digital Discrimination of Access

59. In our *Notice of Inquiry,* we sought comment on whether we should adopt rules that broadly and directly prohibit digital discrimination of access and on what other approaches we should take to implement the statute, such as prohibiting specifically enumerated conduct. Some commenters in response, such as the National Digital Inclusion Alliance, express support for a direct prohibition as a way for the Commission to ''be comprehensive and straightforward in its fulfillment of its Congressional obligation to prevent and eliminate such discrimination.'' Other commenters, such as WISPA, warn that we should be cautious in adopting rules because too broad of a prohibition could ''discourage deployment and investment for service providers, especially small providers,'' while rules that are too narrow ''will not identify actual cases of digital discrimination and will not serve the public interest.'' The National Digital Inclusion Alliance argues that we should identify and enumerate specific prohibited conduct and that such an approach would benefit the industry, subscribers, and the government by making clear what is barred by our rules.

60. We seek comment on whether we should adopt a broad prohibition on digital discrimination of access, and how to structure and enforce such a prohibition. Would adopting a broad prohibition on digital discrimination of access be our best course to effectuate Congress's direction to adopt rules to ''facilitate equal access,'' including ''preventing digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin,'' and ''identifying necessary steps for the Commissions to take to eliminate [digital] discrimination''? Would it present administrative challenges for government or a lack of clarity for providers or consumers? Would that lack of clarity chill investment? How could we address any identified practical challenges? Should we accompany any broad prohibition we adopt with specific, enumerated prohibited practices? If so, would this take the place of a broad prohibition of digital discrimination or be supplementary? If we were to publish a list of prohibited practices considered examples of digital discrimination, what practices should we include? Are the answers to these questions different if we adopt a definition of digital discrimination based on disparate impact or disparate treatment? If we adopt a definition of digital discrimination of access that includes a disparate impact standard, should we nonetheless limit our broad prohibition to instances of disparate treatment? Would a rule prohibiting only intentionally discriminatory policies or practices be effective in achieving the stated goal of subsection 60506(a)? If not, why not? Would such a rule establish a bar too high for claimants (or the Commission) to clear, and would it be easy to evade? Is there any context in which we should adopt a prohibition on disparate impact and not disparate treatment? Or does disparate impact inherently include disparate treatment?

61. We seek comment on how to address claims of digital discrimination of access under any broad prohibitions we might adopt. We first seek comment on the analytical framework we should use for claims of digital discrimination of access under disparate impact and disparate treatment prohibitions. We next seek comment on how to effectuate enforcement of any prohibition we might adopt.

a. Analytical Framework

62. *Disparate Impact Framework.* We seek comment on how we should structure our rules and procedures to implement a prohibition of digital discrimination based on disparate impact. Courts have generally used a three-part test to determine whether a facially neutral policy or practice discriminates against members of protected groups under civil rights statutes. First, the complainant must establish a *prima facie* case of discrimination by proving that the challenged practice or policy causes a disproportionate, adverse impact on a group determined by reference to a protected characteristic. This showing creates an inference of discrimination. Second, the burden shifts to the respondent to establish a substantial, legitimate justification for the challenged practice or policy. This second step is typically referred to as the ''rebuttal'' phase. And third, where the respondent provides a substantial, legitimate justification, the complainant can still prevail on the claim by demonstrating the existence of an

available, alternative practice or policy that would achieve the same legitimate objective but with less discriminatory effect. Public Knowledge suggests that we implement such a burden shifting approach so that once a prima facie showing of discrimination has been made, ''the burden would shift to the alleged violator to demonstrate that digital discrimination has not taken place, either by rebutting the evidence, or by providing a 'substantial legitimate justification' for the unequal access to broadband that the complainant has shown.'' We seek comment on whether to adopt this type of framework. Is this the best way to analyze claims of disparate impact? How burdensome is it, and would another framework be less burdensome? Should we adopt all three of the steps used in Federal court cases involving disparate impact, a selection of them, or different steps? If not, what specific components of a burden-shifting framework should we include?

63. If we adopt a burden-shifting framework similar to that used in Federal court, what specifically should we require at each step of the analysis? What type of evidence or data sources would we look for to substantiate the presence of a policy or practice that disproportionately affects an individual, group, or community that meets one of the listed characteristics? EveryoneOn supports the adoption of rules that, similar to those established under the Fair Housing Act, would prohibit practices based on ''discriminatory effect, even if not motivated by discriminatory intent,'' and suggests that examples of such discriminatory effect could be found in ''the assessment of unduly high fees, service interruptions, unreliable internet service in low-income neighborhoods, and unfair barriers such as credit checks, deposits, etc. when subscribing to or reestablishing service.'' Should we identify these and other types of practices as prima facie evidence of disparate impact when supported by statistical or other reliable evidence of their disproportionate impact on individuals or groups determined by reference to protected characteristics? The Multicultural Media, Telecom and Internet Council suggests that the existence of a statistical disparity connected to a provider's policies or practices would be required to make an initial case of disparate impact. Should we adopt that standard, or a different one? Under a traditional burden-shifting approach, how would a provider show that it had a substantial legitimate justification for its policy or practice? Would proof that the challenged practice or procedure was necessitated by genuine technical and economic feasibility concerns provide the necessary showing to rebut the prima facie case? Are there any substantial business justifications that we should recognize in this context other than genuine technical and economic feasibility concerns? Are there other ways that we might incorporate the consideration of technical and economic feasibility into this step of the traditional, three-step analysis? And what should we require to establish an alternative practice that would achieve the same objective but with less discriminatory effect? Can we look to existing precedent to answer these questions? And do we need to establish these standards at this point, or should we allow them to be refined on a case-by-case basis going forward?

64. *Disparate Treatment Framework.* We seek comment on how we should structure our rules to implement a prohibition of digital discrimination of access based on disparate treatment. In general, courts have used several analytical frameworks to evaluate claims of intentional discrimination. The Connecticut Office of State Broadband & Office of Consumer Counsel suggests that we use a burden shifting system based on the McDonnell Douglas framework. Under the McDonnell Douglas framework, a claim of discrimination proceeds through three steps: (1) the plaintiff proves a prima facie case of discrimination by typically showing that they are a member of a protected group, were eligible for a service or employment opportunity, were denied or otherwise treated in an adverse manner, and that a similarly situated individual who is not a member of the protected group was treated better; (2) the burden then shifts to the defendant to articulate a legitimate, non-discriminatory reason for the challenged practice or action; and (3) if the defendant meets the burden to provide a legitimate, non-discriminatory reason, the burden shifts back to the plaintiff to demonstrate that this reason is pretext for discrimination. We seek comment on whether to adopt this framework to analyze claims of intentional digital discrimination of access. Is this the best way to analyze claims of intentional discrimination? Are there certain situations in which it would work better than others? If so, what situations and why? How burdensome is this analysis, and would other frameworks be less burdensome? If we adopt rules incorporating this framework, would we need to make any changes to accommodate the specific direction of section 60506 and, if so, what changes would be appropriate?

65. If we adopt a burden-shifting framework similar to McDonnell Douglas, what specifically would we require at each step of the analysis? What types of evidence should we consider sufficient to demonstrate discriminatory intent? For example, without access to the internal communications of a broadband provider, how would a subscriber support a claim of intentional digital discrimination? What types of data sources could the Commission or subscribers use to analyze potential claims? How might a Commission data collection fit into this process? In the context of broadband internet access service, how would the Commission evaluate the ''fit'' between the challenged practice and the justifications offered in support of it? Does consideration of technical and economic feasibility fit in this step of the analysis? On what basis might we determine that any proffered reasons are pretextual? Can we look to existing precedent to answer these questions? And do we need to establish these standards at this point, or should we allow them to be refined on a case-by-case basis going forward?

66. We seek more focused comment on how to incorporate section 60506's direction to account for ''technical and economic feasibility'' into any intentional discrimination prohibition we adopt. In the McDonnell Douglas framework, once a prima facie case is made, the burden shifts to the provider to demonstrate that the conduct is not motivated by discrimination but is instead based on legitimate non-discriminatory reasons. Does following that model adequately ''tak[e] into account the issues of technical and economic feasibility''? Or are there instances in the context of broadband service where intentional discrimination is justified by technical and economic feasibility? In particular, we seek comment on how subsection 60506(b)(1)'s inclusion of ''income level'' as a listed characteristic fits into this framework. For example, should a provider be permitted to defend a claim of income-based intentional discrimination by offering projections showing that deploying to a particular community would likely produce a lower-than-normal rate of return on investment? How are we to determine whether a proffered economic justification, such as rate of return, is a pretext for income-based discrimination? Some commenters argue that a smaller-than-normal profit margin should not be a sufficient reason

to claim economic infeasibility and that the Commission should rarely excuse discrimination on such grounds. We seek comment on this view and on the National Digital Inclusion Alliance's suggestion that we establish a process for providers to identify a technical or economic feasibility justification, provide relevant proof, and request a waiver from the obligations we impose under section 60506. Would such a system operate as a standalone waiver process in the context of any rules preventing digital discrimination of access or function only as part of a provider's defense to claims of digital discrimination? Would a standalone process confer benefits that are not already available under the Commission's general waiver authority?

67. *Other Frameworks.* Rather than adopt one of the frameworks elaborated above, should we take a different approach to analyzing claims of digital discrimination of access under a broad prohibition? CTIA argues that a burden shifting process is a ''poor fit here'' because it would be highly burdensome on broadband internet access service providers, and broadband coverage and service varies from location to location. We seek comment on these arguments. Under an alternative framework for intentional discrimination called the Arlington Heights approach, courts look to a ''mosaic'' of factors, that when taken together, can demonstrate discriminatory intent. These factors might include: (i) statistics demonstrating a pattern of discriminatory effect; (ii) historical background; (iii) the sequence of events leading up to the decision; (iv) departures from normal procedures or conclusions; (v) relevant legislative or administrative history; and (vi) a consistent pattern of actions that impose a much greater harm on minorities than non-minorities. Would this type of framework be better suited to this context? Why or why not? Are there other frameworks we should consider? Rather than adopting a framework for case-by-case review, should we simply list prohibited practices? Would that approach adequately address digital discrimination of access or would it be too limited to adequately capture all instances of digital discrimination of access? How could that approach evolve with changing practices and a changing market? Alternatively, does the inaccessibility of intent evidence require some form of burden shifting framework?

b. Enforcement

68. If we were to adopt a broad prohibition on digital discrimination, we seek comment on the most effective framework for enforcing it. In the *Notice of Inquiry,* we sought comment on whether we should establish an alternative complaint process, separate from our existing informal complaint system, for violations of the rules we adopt. We now seek comment on whether to rely on the standard FCC enforcement model, establish a complaint system, or enable or empower third parties to enforce the rules we adopt, and on the scope of our authority to adopt each approach.

69. *FCC Enforcement.* We seek comment on whether our current FCC enforcement capabilities are the best and most effective avenue to accomplish congressional intent. Are there certain characteristics or features of our various enforcement processes that would make it difficult for us to enforce compliance with our rules implementing section 60506? If so, how might we address those issues so as to effectively enforce the rules we ultimately adopt? TURN encourages us to consider using our existing enforcement toolkit of letters of inquiry, notice of apparent liability, and forfeiture orders to enforce our rules prohibiting digital discrimination of access. We seek comment on these ideas and on whether these tools are appropriate and sufficient for enforcing claims of digital discrimination of access. Should we rely principally or exclusively on FCC staff-initiated investigations to enforce our rules, with the possibility of monetary forfeitures or other penalties for offending conduct? Would such an approach unduly constrain enforcement of the rules by channeling most, if not all, of the enforcement activity through our investigations staff? Are there better, more effective ways for us to enforce our rules in this context? If we adopt a burden-shifting analysis for enforcement of any prohibition we adopt, is the Commission's traditional investigative process sufficiently flexible to accommodate such a framework? Or would we need to modify or adopt new processes to enable a burden-shifting analysis?

70. We seek comment on the punishments or remedies the Commission could impose and award as part of our enforcement of rules prohibiting digital discrimination of access. Are monetary forfeitures the appropriate punishment in proven cases of digital discrimination of access? What other punishments or remedies might be appropriate? The Leadership Conference on Civil and Human Rights urges us to create rules that will enable us to effectively collect any financial penalties we impose. We seek comment on what rules we might adopt to ensure our ability to collect any monetary forfeitures we might impose upon determining that a respondent has engaged in digital discrimination of access. Many of our staff-initiated investigations of alleged violations of the Communications Act or our rules are resolved through consent decrees. The Leadership Conference on Civil and Human Rights argues that, for consent decrees to be effective in the context of digital discrimination of access, we need to have sufficient ''capacity to monitor and ensure that any consent decrees are fully complied with.'' We seek comment on what changes, if any, we should make to our consent decree process to ensure it is an effective remedy in this context. Are there options other than fines and consent decrees that we should consider as possible remedies?

71. We seek comment on our authority to address violations of any rules prohibiting digital discrimination of access we adopt through Commission enforcement. Are there limitations on our ability to enforce violations of such rules or act upon complaints of digital discrimination of access? (The Communications Act general enforcement and penal authority are provided for in section 401 and Title V of the Communications Act.) The Commission routinely uses section 503 authority under the Communications Act to impose monetary forfeitures against those who, among other things, ''willfully or repeatedly'' violate ''any rule, regulation, or order issued by the Commission.'' Violations of Commission rules can also be enforced under sections 501, 502, and 401 of the Communications Act. AT&T argues that the Communications Act's Subchapter V enforcement remedies may not be available to the Commission because section 60506 was not enacted ''as part of the Communications Act even though [Congress] explicitly [took] that step with other Infrastructure Act provisions.'' We seek comment on this argument and on whether we lack authority to enforce rules adopted consistent with congressional direction in section 60506. Does the inclusion of subsection 60506(e), which requires us to revise our ''public complaint process to accept complaints from consumers or other members of the public that relate to digital discrimination,'' evidence Congress's intent that the Commission act on digital discrimination complaints and enforce rules prohibiting digital discrimination of access? Does the inclusion of subsection 60506(b), which directs us to adopt rules to ''facilitate

equal access'' including addressing digital discrimination of access, evidence the same? Do we have either direct or ancillary authority under section 4(i) of the Communications Act to enforce rules prohibiting digital discrimination of access as necessary to discharge our statutory mandate of ''preventing'' digital discrimination of access? Could we enforce these rules in other ways, such as by barring offending providers from participating in funding programs or finding that violations of our digital discrimination rules raise character qualification issues? Should we expand our character policy statement to include violations of our rules barring digital discrimination of access? If so, how? Should it apply only to a pattern of discrimination?

72. *Structured Complaint Process.* We next seek comment on whether we should establish a structured process for adjudicating formal complaints alleging violations of any rules we adopt in this proceeding. Under our informal consumer process, discussed above, there is no filing fee and any complaints would aid the Commission in identifying potential areas for investigation. A structured complaint process, in contrast, would include a more defined dispute mechanism that results in a Commission determination on the issue, such as currently exists under our rules promulgated pursuant to section 208 of the Communications Act. WISPA argues that there is no need for the Commission to create an alternative complaint process because our informal consumer complaint process is sufficient, and other commenters argue that a complaint process requiring provider response and formal Commission adjudication may be overly burdensome. We seek comment on whether we should adopt a structured complaint process to provide parties with the flexibility to choose between two systems. Would our structured complaint process be accessible to and effective for complainants, or would the resource imbalance between consumers and providers render the process ineffective at resolving complaints of digital discrimination? Are there steps we could take to ensure that our structured complaint process is accessible and effective? And would a structured complaint system be unduly burdensome to the Commission, providers, or complainants? Does that burden outweigh any benefits that might be offered by such a formal complaint process? Would our decision to adopt a particular definition of digital discrimination of access, or to adopt a particular analytical framework for claims of digital discrimination of access, have any bearing on what types of complaint processes we should create?

73. If the Commission were to adopt a structured complaint process for claims of digital discrimination of access, we seek comment on the design of this process and remedies it could provide. Should we model our complaint process on the existing complaint process established pursuant to section 208 of the Communications Act? Under section 208, complainants can file using an informal or formal process. Under the informal process, the complainant submits a statement in writing identifying the carrier against which the complaint is made, a complete statement of facts and the relief sought. No fee is required and the Commission will transmit the complaint to the carrier for investigation with a prescribed response time. In contrast, the formal complaint process requires a fee and is similar to civil litigation in that it involves a complaint, answer, reply, and often discovery, motions and briefs. Formal complaints require the complainant to include in the complaint specific facts and evidence supporting all claims in the complaint. What aspects of these section 208 complaint processes should we incorporate into any new process we might establish? As Leadership Conference on Civil and Human Rights advocates, would the three-part burden shifting process courts use to examine complaints brought under section 202 be instructive? If we were to adopt a similar framework, what modifications, if any, would we make to best apply it to the context of this proceeding? Should we maintain a separate informal and formal process for digital discrimination of access complaints or should we consolidate and just have one complaint process? If we just have one, what aspects would we retain from each process? Would it be appropriate to permit fact discovery in such a process? If so, how could that process be tailored to avoid undue burdens while providing relevant information? We also seek comment on whether a dispute assistance process modeled after § 14.32 of the Commission's rules would be useful in the context of resolving claims of digital discrimination of access. Under this system, a consumer or other party can submit to the Commission a claim that a manufacturer or service provider is acting in violation of certain sections of the Communications Act and Commission rules, the Commission forwards the request for dispute assistance to the specified provider/manufacturer and assists the claimant and provider/manufacturer in reaching a settlement. If after thirty days a settlement has not been reached, the claimant can file an informal complaint with the Commission. Would a similar system aid in the timely and effective resolution of digital discrimination claims?

74. We further seek comment on whether we should borrow aspects of the Equal Employment Opportunity Commission's (EEOC) complaint adjudication model. For example, similar to EEOC processes, should we authorize an expert within the Commission to review and investigate complaints and vest such expert with the authority to dismiss the complaint or issue a ''non-binding probable cause determination letter''? Would this, as the Multicultural Media, Telecom and internet Council argues, encourage settlement, prevent the Commission from being overwhelmed with complaints, and still ensure that individuals have access to the legal system if necessary? As with the EEOC's process, should we also include a voluntary alternative dispute resolution option such as mediation? How could we design any complaint process to ensure it is not abused, promotes transparency, and mitigates any privacy concerns? What remedies could the Commission offer to consumers that successfully prove a claim of digital discrimination of access? Would a financial penalty be a meaningful remedy in most such cases? Or would we need to direct the provider or target of the complaint to take certain action? Are there other models of enforcement employed in similar regulatory regimes by other Federal agencies that would be appropriate for consideration here?

75. We seek comment on any limits to our authority to adopt a structured complaint process for claims of digital discrimination of access. Do we have authority under section 208 of the Communications Act to accept and investigate claims of violations of rules prohibiting digital discrimination of access? If not, do we have authority to create a new formal complaint process under section 60506, whether under subsection 60506(e)'s direction to revise our complaint process or some other provision? If not, on what basis do we ''ha[ve] the power to review and act upon'' complaints sua sponte, as Public Knowledge argues? Are there other sources of authority we could rely on to create a structured complaint process? Does the scope of our authority to adopt a structured complaint process depend in any way on whether we define

discrimination as based on disparate impact or disparate treatment? If we have authority to create a complaint process, are there nonetheless limits on our authority to offer complainants certain types of relief, or any relief at all?

76. *State and Local Enforcement.* We also seek comment on what processes our rules could include for two suggestions put forth in the record: enforcement by state and local officials, and by private right of action. In what ways might we incorporate state and local officials into our enforcement approach for claims of digital discrimination of access, and what roles might we play in state and local enforcement schemes? Should we encourage states and localities to adopt and enforce independently rules that are substantively similar to those we adopt in this proceeding? What other models of coordination with state and local officials might we look to when considering the enforcement of our rules? Do we have authority to create rights that private parties could enforce or prosecute before state and local governmental bodies or in the courts? On what basis, and before which entities would we do so? Should we interpret section 60506 as solely directing the Commission to update its administrative complaint process and not providing separate authority to create a private right of action?

77. *Other Enforcement Processes.* Are there any other enforcement processes, beyond the three categories identified above, that we should consider creating or adopting? What would those processes be, and why would they be better suited to enforcing our rules than the processes discussed above?

2. Affirmative Obligations

78. We next seek comment on what affirmative obligations we could place on providers to address digital discrimination of access. In the *Notice of Inquiry,* we sought comment on whether the Commission should ''adopt rules to require, encourage, or otherwise incentivize'' covered entities to ''take affirmative steps to prevent digital discrimination.'' In response, commenters offer various proposals about steps providers could affirmatively take to address digital discrimination of access, including having providers voluntarily devise and adopt plans to address digital equity, mirroring rules from other agencies, and providing consumers information that could highlight potential discrimination. We seek comment on these proposals.

79. First, we seek comment on Microsoft's proposal for providers to use Commission data to formulate plans to address digital discrimination of access. Microsoft observes that providers, using the new Broadband Data Collection tool, could ''gather demographic and usage information from . . . surveys they would conduct of their subscribers,'' which could then be filed with the Commission. Microsoft asserts that this demographic data could also be used by providers, on a voluntary basis, to ''create a plan to enhance digital equity in their operations,'' which would act as ''an early step'' in identifying issues involving digital discrimination. Microsoft argues that the Commission should require submission of such plans before enacting any other rules of its own, as it asserts that both the Commission and industry lack sufficient data on issues regarding digital discrimination. Would this proposal meaningfully address digital discrimination, and should we adopt it? What would such plans look like? Should, as Microsoft argues, the Commission allow providers to adopt such plans on a voluntary basis and have them treated as confidential by the Commission? Although Microsoft argues we should adopt this proposal before adopting rules addressing digital discrimination of access, would this approach nonetheless be a useful complement to other rules we consider in this Notice? If we adopt a broad prohibition on digital discrimination of access, how would this type of transparency regime relate to that prohibition? Would certain practices be expected or required in the filings; and would participation be chilled if providers are concerned that certain practices could evidence noncompliance with our rules?

80. We next seek comment on Leadership Conference on Civil and Human Rights' proposal that the Commission adopt rules mirroring a provision of the Fair Housing Act that requires Department of Housing and Urban Development (HUD) grantees to affirmatively further fair housing. Under this provision, HUD grantees, as recipients of HUD funding, must not only abide by HUD rules on fair housing, but also generally promote equity in housing, although HUD ''does not require any specific form of planning or submission of fair housing plans to HUD.'' The Leadership Conference on Civil and Human Rights argues that the Commission could require providers to do the same with respect to combating digital discrimination, with implementation modeled after HUD's approach. What should rules modeled after HUD's entail in this context? Would it necessitate that covered entities take any specific steps to combat or monitor for instances of digital discrimination of access? Should the Commission impose such an obligation, a variation thereof, or other general requirement? What would such a rule look like, and what would it accomplish in this context?

81. We seek comment on record proposals that we require providers to give information to their subscribers on relevant requirements and resources related to the Infrastructure Act, this proceeding, and digital discrimination of access more generally. For example, TURN proposes that information about programs that subsidize the cost of broadband should be disseminated to consumers by providers. TURN also proposes that providers distribute public safety information regarding ''outages, the need for backup power, [and] emergency phone numbers,'' particularly in low-income areas and those subject to natural disasters. Additionally, TURN and other commenters contend that providers should offer information about how to seek redress if a consumer believes that they have experienced digital discrimination of access. Should we adopt any of these proposals, or do so with any adjustments? How should we require that any such information be distributed, both in terms of frequency and format? (For example, TURN argues that disclosure of available channels for redress in the event of digital discrimination should be made with the same ''frequency that privacy notices are provided and available in various mediums, including, but not limited to, websites, billing inserts, and emails.'') Are there other kinds of information not specified in TURN's comments that covered entities should be required to disseminate? For example, should we require providers to make available information about their service that would promote the ability of consumers to identify when they may be experiencing digital discrimination? What information should we require providers to make available in this respect, and how would we design such a requirement to ensure that consumers can understand the information provided? TechFreedom suggests that proposals requiring dissemination of additional information would increase the price of broadband for consumers by increasing costs to providers. What would the costs be to providers, would they have the effect claimed by TechFreedom, and how do any costs

measure up against the potential benefits of additional disclosures?

82. What other affirmative steps should we consider requiring (whether of providers or others) in order to more effectively combat digital discrimination of access? Are there other types of self-assessment or reporting obligations the Commission should impose? For example, should we require providers to audit whether they may be engaging in practices that could have a disparate impact on groups determined by reference to protected characteristics? How should such audits be conducted and using what standards? Should the Commission require that covered entities report the results of such audits, and if so, how frequently should they be conducted and reported? Should the results of such audits be made public? Are there any other transparency or disclosure requirements we should impose? Should we require providers to disclose or explain to consumers why offerings (whether in terms of price, speed, or other aspects) differ as between two given geographic areas? Should we adopt rules modeled on cable franchising rules to promote the build-out of broadband infrastructure? Should we require that providers offer consumers written materials in multiple languages? Are there other rules, whether from other agencies, state and local governments, or other entities, that we should look to? Should we consider different auditing and/or reporting requirements for different types of entities?

3. Other Proceedings

83. We seek further detailed comment on what actions we should take in other policy areas identified in the record to address digital discrimination of access. In response to the *Notice of Inquiry,* commenters identified a variety of proceedings in which we could take action to address digital discrimination.

84. We first seek comment on actions we could take to promote infrastructure deployment in furtherance of our goal to address digital discrimination. Commenters identify topics including addressing state and local laws that may impact infrastructure deployment, spectrum policy, and municipal broadband as areas for further Commission action to address digital discrimination. We seek comment on what specific action we should take in these proceedings to address digital discrimination, and how that action furthers the goals identified by Congress in section 60506. We seek further comment on the record's focus on issues regarding broadband service in multiple tenant environments (MTEs) such as apartment buildings and offices. Commenters cite issues such as conflicts over access to inside wiring; insufficient infrastructure for high-speed broadband; lack of economic incentives for providers in low-income communities; and exclusive rooftop access agreements as areas in which the Commission could act to address digital discrimination of access. Should we address some or all of these issues in the MTEs proceeding to combat digital discrimination of access? How specifically would these actions do so?

85. We also seek comment on the record discussion about whether and how the Commission can use its funding programs to combat digital discrimination of access. What programs should the Commission consider using in undertaking this effort? What programs relate to digital discrimination of access and how? What kinds of modifications, if any, would need to these programs? Are there any statutory barriers to using these programs to combat digital discrimination of access? Further, we seek comment on record arguments that inclusion of section 60506 in Division F of the Infrastructure Act signals that the Commission should focus on providing funding in its efforts to prevent digital discrimination. AT&T argues, for example, that the Infrastructure Act primarily concerns spending and that section 60506's directive to facilitate equal access, read in this context, primarily represents a funding commitment. Is this interpretation correct? Or should we understand section 60506 to direct us to take separate and complementary action from that elaborated elsewhere in the Infrastructure Act? Does the inclusion of section 60506 counsel us to tie our funding efforts to preventing and eliminating digital discrimination? Should our existing funding programs be revised in any way to ensure they do not perpetuate existing inequities? Should receipt of funds be contingent on compliance with anti-discrimination requirements? Should the Commission coordinate with other agencies to ensure such requirements apply to other Federal funding programs, including the National Telecommunications and Information Administration's (NTIA) Broadband Equity, Access, and Deployment (BEAD) Program? What is the relationship, if any, between section 60506(c) and the BEAD Program and other Federal broadband deployment funding efforts?

4. Other Record Proposals

86. We seek comment on other record proposals for action we should take to fulfill congressional direction to address digital discrimination of access beyond the proposals discussed above. In response to the *Notice of Inquiry,* commenters suggest various other proposals such as assisting those on Tribal lands, undertaking outreach efforts to promote awareness of any digital discrimination rules we adopt, and making organizational changes to the Commission. We seek further comment on these proposals and any additional steps we should take to eliminate digital discrimination of access.

87. *Tribal Lands.* We seek comment on any actions we can take to address digital discrimination of access on Tribal lands. In response to the *Notice of Inquiry,* one commenter argues that we should take dedicated action to facilitate equal access on Tribal lands, including by ''offer[ing] technical assistance to Tribal Nations planning their own networks . . . creat[ing] a resource to connect Tribes and infrastructure partners . . . [and] connect[ing] infrastructure partners interest in working with Tribal Nations with training'' on issues unique to deploying infrastructure on Tribal lands. We seek comment on these record proposals and whether to adopt them, following engagement with Tribal partners. In what specific ways do those living on Tribal lands uniquely experience digital discrimination of access? Is dedicated action necessary to address those issues, or can they be addressed by more general rules addressing digital discrimination of access? Would some or all of these record proposals effectively address any unique digital discrimination of access faced by those living on Tribal lands, and would they do so more effectively with any modifications? Are there other proposals we should consider?

88. *Outreach.* We next seek comment on addressing digital discrimination of access through outreach efforts. Numerous commenters in the record express support for educational efforts to promote digital literacy, including developing a digital literacy program to raise awareness of the benefits and availability of broadband and using available FCC data to help NTIA direct funds for digital literacy to communities most in need, arguing that these efforts can address a lack of adoption in areas where providers have already deployed broadband. Another commenter advocates that the Commission create an outreach program to educate consumers on any rules we adopt addressing digital discrimination of access and the avenues of relief available to them. We seek comment on these proposals in particular and whether dedicated

outreach efforts to promote digital literacy and awareness of our rules would further prevention or elimination of digital discrimination of access. Would digital education efforts be effective to promote adoption? If so, what specific digital education efforts should we pursue, and should we pursue the suggestions in the record? What issues would be most useful to educate consumers about? Are there entities or organizations we should collaborate with if we undertake digital education efforts? What steps would most effectively promote awareness of any digital discrimination rules we adopt? Should we take steps beyond those our Consumer and Governmental Affairs Bureau routinely takes to advise consumers about Commission rules and public-facing processes? If so, what steps should we take?

89. *Commission Organization.* We seek comment on any organizational changes we should make to the Commission to promote our efforts to address digital discrimination of access and assist in enforcement of any rules we adopt. Commenters to the *Notice of Inquiry* offer that we should hire staff with experience in discrimination law and argue that we should establish a dedicated ombudsperson role and Office of Civil Rights as part of our process for addressing claims of digital discrimination of access. Should we pursue these organizational changes? What would be the benefits of establishing an ombudsperson for digital discrimination, and what specific responsibilities would they have? Should an ombudsperson publish an annual report? Would an independent, impartial, and confidential ombudsperson be useful for consumers and entities subject to our rules in navigating any rules and complaint processes we adopt? Would it be useful to house an ombudsperson, and any Commission staff with expertise on discrimination issues, in an Office of Civil Rights? Would establishing a new organizational unit be preferable to distributing this expertise among the Commission's current Bureaus and Offices? If we did establish an Office of Civil Rights, what issues would such an office oversee, what would be the scope of its authority and responsibilities, and how would it relate to existing Commission organizational units such as the Office of Native Affairs and Policy?

90. *Other Necessary Steps.* We seek comment on any other steps we should take to eliminate digital discrimination of access. Section 60506 directs us to ''identify[ ] necessary steps for the Commission[ ] to take to eliminate'' digital discrimination of access. What steps, beyond adopting and enforcing rules to ''prevent'' digital discrimination of access, are necessary for the Commission to take to ''eliminate'' such discrimination? And how would any such steps specifically ''eliminate'' digital discrimination of access rather than ''prevent'' it?

5. Legal Authority

91. We seek comment on the scope of our authority to adopt rules under section 60506 of the Infrastructure Act. Do the novel structure and language of section 60506 provide the Commission with broad rulemaking authority? Paragraph (b) of section 60506 gives us the broad direction to ''adopt final rules to facilitate equal access to broadband . . . including'' addressing digital discrimination of access. Since this grant ''include[s]'' adopting rules to address digital discrimination of access, can the Commission adopt rules to facilitate equal access that address issues other than, but related to, digital discrimination of access? If so, what issues do commenters believe we have the authority to address under section 60506 of the Infrastructure Act? We also observe that while anti-discrimination laws often revolve around a prohibition of a policy or practice, Congress in this instance gave us the broad direction and the authority to develop our own rules to ''facilitate equal access,'' of which addressing digital discrimination of access is a part. Does this structure signify a broad grant of authority to combat digital discrimination of access as part of efforts to ''facilitate equal access to broadband''? Is that authority broader, or narrower, than that given to other Federal agencies tasked with administering and enforcing statutory prohibitions on discrimination? We seek comment on the scope of the Commission's rulemaking authority in light of the structure and language of section 60506 of the Infrastructure Act.

92. We seek further comment on our authority under paragraphs (b)(1) and (b)(2) of section 60506. In the *Notice of Inquiry,* the Commission sought comment on whether ''preventing digital discrimination'' in paragraph (b)(1) and ''eliminat[ing] discrimination'' in paragraph (b)(2) provided the Commission with distinct authority to enact digital discrimination rules. Commenters agree that ''prevent'' and ''eliminate'' offer different authority, and that ''prevent'' confers upon the Commission the authority to stop digital discrimination before it occurs. Regarding ''eliminate,'' some commenters argue that the term allows the Commission to remove discrimination that already exists and the impact thereof. Other commenters argue that ''eliminate'' does not provide the Commission with the authority to impose ''retroactive liability'' for past deployment decisions. We seek further comment on the authority offered by each of these terms. Does the word ''prevent'' give us broad discretion to adopt prophylactic measures to stop digital discrimination of access from occurring going forward? What are the bounds of that authority? How does that authority differ from a more standard prohibition on discriminatory conduct or outcomes? What does the word ''eliminate'' offer? Does it give us discretion to address digital discrimination of access that already exists? Is there a distinction between addressing currently existing digital discrimination of access and imposing ''retroactive liability''? Does the statutory language that we should ''identify[ ] necessary steps . . . to eliminate [digital] discrimination'' in any way guide how we understand this direction? Did Congress intend for us to merely identify steps, and not take them? Since this term is used in the context of our greater direction to ''facilitate equal access,'' do we nonetheless have discretion to address current-existent digital discrimination of access as part of that effort? In considering our authority under section 60506, should we understand it as a ''civil rights'' statute or a ''universal service'' statute, and what is the significance of either interpretation?

D. State and Local Model Policies and Best Practices

93. We propose to adopt, as guidelines for states and localities, the best practices to prevent digital discrimination and promote digital equity recommended by the Communications Equity and Diversity Council (CEDC). Subsection 60506(d) of the Infrastructure Act directed the Commission to ''develop model policies and best practices that can be adopted by states and localities to ensure that broadband internet access service providers do not engage in digital discrimination.'' To help fulfill this direction, Chairwoman Rosenworcel directed the CEDC to issue recommendations on this subject. The Digital Equity and Inclusion (DEI) Working Group issued a report recommending both (1) model policies and best practices to prevent digital discrimination by broadband providers, and (2) best practices to advance digital equity for states and localities. On November 7, 2022, the members of the full CEDC voted unanimously in favor

of finalizing the report for the Commission. We now propose to adopt both sets of recommendations as guidelines for states and localities, in fulfillment of subsection 60506(d), acknowledging that this does not limit states and localities from taking additional steps to prevent and eliminate digital discrimination of access, and seek comment on this proposal.

94. First, we seek comment on our proposal to adopt the report's ''Model Policies and Best Practices to Prevent Digital Discrimination by ISPs.'' The report outlines six model policies and best practices for states and localities: (1) developing and making available recurring ''broadband equity assessments''; (2) facilitating awareness among landlords regarding ''tenant choice and competition'' in MTEs; (3) identifying ways to ''incentivize equitable deployment''; (4) managing public property (such as rights-of-way) ''to avert discriminatory behaviors that result in or sustain digital discrimination and redlining''; (5) convening regular meetings of stakeholders to evaluate ''areas and households unserved and underserved with competitive and quality broadband options''; and (6) encouraging ''fair competition and choice.'' These model policies and best practices reflect the perspective of the industry, public interest stakeholders, local government representatives, and others, and we tentatively conclude that adopting these consensus recommendations will be effective in addressing digital discrimination of access at the state and local level. We seek comment on whether to adopt these best practices. Do they provide states and localities with the tools and resources necessary to provide equal access to broadband service in their communities? And do they appropriately cover the scope of issues these model policies and best practices should address? Should any be removed, or should we consider adding any additional model policies and best practices? We seek comment on whether the best practices, as recommended in the report, can be improved and how. We also seek comment on any additional support the Commission can provide to states, localities, and internet service providers to effectuate these recommendations.

95. Second, we seek comment on our proposal to adopt the report's ''Best Practices to Advance Digital Equity for State and Localities.'' The report outlines thirteen model policies and best practices for states and localities, which, in sum, recommend: (1) raising awareness about and streamlining the application process for government benefit programs such as the Affordable Connectivity Program; (2) promoting digital literacy; and (3) increasing access to devices and spaces to access the internet. The best practices to advance digital equity for state and localities reflect the consensus of industry and public interest stakeholders, and we believe that they can serve as an effective framework for states and localities to advance digital equity. We seek comment on whether to adopt these best practices as guidelines for states and localities. Do they equip states and localities with the tools and resources necessary to advance digital equity? And do they appropriately cover the scope of issues these model best practices should address? Should any be removed, or should we consider adding any additional best practices? We seek comment on whether the best practices, as recommended in the report, can be improved, and how.

E. Other Efforts To Promote Digital Equity and Inclusion

96. The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. (Section 1 of the Communications Act of 1934 as amended provides that the FCC ''regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.'') (The term ''equity'' is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders, and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.) Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

IV. Initial Regulatory Flexibility Analysis

97. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (*NPRM*). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *NPRM.* The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for and Objectives of the Proposed Rules

98. The *NPRM* furthers the Commission's efforts to promote equal access to broadband to all people living in the Nation. Specifically, the *NPRM* seeks focused comment on the rules the Commission should adopt to fulfill the congressional direction in section 60506 of the Infrastructure Act to facilitate equal access to broadband, prevent digital discrimination of access, and identify steps necessary to eliminate such discrimination. The *NPRM* also proposes and seeks comment on possible definitions of ''digital discrimination of access'' as used in the Infrastructure Act. The *NPRM* next proposes to revise the Commission's public complaint process to accept complaints related to digital discrimination. The *NPRM* also proposes to adopt the model policies and best practices for states and localities regarding digital discrimination that have been recommended by the Communications Equity and Diversity Council.

B. Legal Basis

99. The *NPRM* proposes to identify authority under section 60506 of the Infrastructure Act and seeks comment on the bounds of the Commission's authority to enact the proposed rules.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

100. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and by the rule revisions on which the *NPRM* seeks comment, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

101. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.

102. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. (The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C. 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.) Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

103. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,931 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. (While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.) Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.'' (This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments—independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments—Organizations tbls.5, 6 & 10.)

1. Wireline Carriers

104. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including voice over internet protocol (VoIP) services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. (Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.)

105. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

106. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. (Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers,

Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.) The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were fixed local exchange service providers. Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

107. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. (Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.) Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers. Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

108. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 151 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 131 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

109. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for a ''small cable operator,'' which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 677,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator based on the cable subscriber count established in a 2001 Public Notice. Based on industry data, only six cable system operators have more than 677,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. (The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules. See 47 CFR 76.910(b).) Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

110. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers. is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 115 providers that reported they were engaged in the provision of other toll services. Of these providers, the Commission estimates that 113 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

2. Wireless Carriers

111. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

112. *Satellite Telecommunications.* This industry comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $38.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than $25 million. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 71 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 48 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, a little more than of these providers can be considered small entities.

3. Resellers

113. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 293 providers that reported they were engaged in the provision of local resale services. Of these providers, the Commission estimates that 289 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

114. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 518 providers that reported they were engaged in the provision of toll services. Of these providers, the Commission estimates that 495 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

4. Other Entities

115. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (*e.g.,* dial-up internet service providers (ISPs)) or VoIP services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. Based on this data, the Commission estimates that the majority of ''All Other Telecommunications'' firms can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

116. The *NPRM* proposes to revise the Commission's public complaint process to accept complaints regarding digital discrimination of access, as directed in section 60506 of the Infrastructure Act by: (1) adding a dedicated pathway for digital discrimination of access complaints; (2) collecting voluntary demographic information from filers who submit digital discrimination of access complaints; and (3) establishing a clear pathway for organizations to submit digital discrimination of access complaints. The *NPRM* seeks comment on these proposals. The *NPRM* also seeks comment and any other changes that the Commission should make to the public complaint process to accept complaints related to digital discrimination of access. The *NPRM* also seeks comment on record proposals to place affirmative obligations the Commission should place on broadband providers, including reporting and recordkeeping requirements.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

117. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

118. The *NPRM* seeks comment how to incorporate section 60506 of the Infrastructure Act's direction to account for ''technical and economic feasibility'' in the Commission's definition of ''digital discrimination of access,''

including issues of technical and economic feasibility faced by small entities. The *NPRM* also seeks comment on the burden that various record proposals to combat digital discrimination of access would place on covered entities, including small entities, and ways to minimize that burden.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

119. None.

V. Procedural Matters

120. *Ex Parte Requirements.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with Rule § 1.1206(b). In proceedings governed by Rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

121. *Paperwork Reduction Act.* This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

VI. Ordering Clauses

122. Accordingly, *it is ordered*, pursuant to sections 1, 2, 4(i)–(j), 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i) through (j), 303(r), and section 60506 of the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, 1245–46 (2021), codified at 47 U.S.C. 1754, that the Notice of Proposed Rulemaking *is adopted*.

123. *It is further ordered* that, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on the Notice of Proposed Rulemaking on or before 30 days after publication in the **Federal Register**, and reply comments on or before 60 days after publication in the **Federal Register**.

124. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center SHALL SEND a copy of the Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene Dortch,

Secretary.

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